



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**VIA CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

**DEC 10 2012**

Bridget Kohtz

Frankfort, IN 46041

RE: MURs 6078, 6090, 6108, 6139, 6142, and  
6214 and AF 2512  
Obama for America and Martin Nesbitt, in  
his official capacity as Treasurer  
Obama Victory Fund and Andrew Tobias, in  
his official capacity as Treasurer

Dear Ms. Kohtz:

This is in reference to the complaint you filed with the Federal Election Commission on October 27, 2008, which was designated as MUR 6108, concerning Obama for America and Martin H. Nesbitt in his official capacity as Treasurer, and the Obama Victory Fund and Andrew Tobias in his official capacity as Treasurer, alleging violations of the Federal Election Campaign Act of 1971, as amended (the "Act").

On August 24, 2010, the Commission found reason to believe Obama for America and Martin Nesbitt in his official capacity as Treasurer violated 2 U.S.C. § 441a(f) of the Act, and authorized an audit pursuant to 2 U.S.C. § 437g. The Commission dismissed allegations that Obama for America and Martin Nesbitt in his official capacity as Treasurer violated 2 U.S.C. §§ 441e and 441f. On March 20, 2012, the Commission found reason to believe Obama for America and Martin Nesbitt in his official capacity as Treasurer violated 2 U.S.C. § 434(b) of the Act. Copies of the Factual and Legal Analyses, which formed the basis for the Commission's determinations, are enclosed.

On August 24, 2010, the Commission also found no reason to believe the Obama Victory Fund and Andrew Tobias in his official capacity as Treasurer violated 2 U.S.C. §§ 441a(f), 441e, and 434(b), and dismissed allegations that the Obama Victory Fund and Andrew Tobias in his official capacity as Treasurer violated 2 U.S.C. § 441f. A copy of the Factual and Legal Analysis, which formed the basis for the Commission's determination, is enclosed.

On December 7, 2012, the Commission accepted a conciliation agreement signed by Obama for America and Martin Nesbitt in his official capacity as Treasurer to resolve their violations of the Act. This agreement settles violations of 2 U.S.C. §§ 434(a), 434(b), and

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MURs 6078, 6090, 6108, 6139, 6142, and 6214 and AF 2512  
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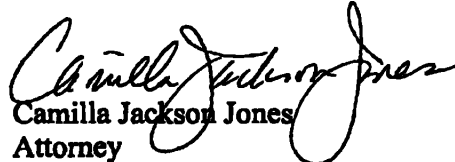
441a(f) identified in the Matters Under Review, as well as violations of 2 U.S.C. § 434(a)(6)(A), which were identified during the Commission's audits. The Commission simultaneously closed the file in this matter. A copy of the Conciliation Agreement with Obama for America and Martin Nesbitt in his official capacity as Treasurer is enclosed for your information.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009).

The Act allows a complainant to seek judicial review of the Commission's resolution of this action. See 2 U.S.C. § 437g(a)(8).

If you have any questions, please contact me at (202) 694-1650.

Sincerely,

  
Camilla Jackson Jones  
Attorney

**Enclosures**

1. Obama for America Factual and Legal Analysis (8/24/10)
2. Obama for America Factual and Legal Analysis (3/20/12)
3. Obama Victory Fund Factual Analysis (8/24/10)
4. Conciliation Agreement

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**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

**RESPONDENTS:** Obama for America and **MURs:** 6078/6090/6108/6139/6142/6214  
Martin Nesbitt, as Treasurer

**I. INTRODUCTION**

These six matters involve overlapping allegations that Obama for America and Martin Nesbitt, in his official capacity as Treasurer ("OFA" or the "Committee") - Barack Obama's principal campaign committee for the 2008 presidential election - accepted various excessive and/or prohibited contributions in violation of the Federal Election Campaign Act of 1971, as amended, ("FECA" or "the Act").

The complaints vary in their approach to presenting similar allegations. While some of the complaints rely primarily on media reports regarding anecdotal examples of allegedly suspicious online fundraising transactions, *see* MURs 6078/6090/6108, other complaints provide a listing of transactions that are alleged to be part of suspicious patterns in OFA's fundraising receipts. *See* MURs 6139, 6142, 6214. Rather than attempting to address all of the transactions being questioned, OFA focuses on its comprehensive compliance system, and asserts that this system allowed them to identify and take appropriate corrective action as to all contributions for which there were genuine questions as to possible illegality. *See* OFA Responses in MURs 6078/6090/6108, MURs 6139 & 6142 and MUR 6214. Respondents assert that all genuinely excessive and prohibited contributions detailed in the complaints have been refunded. Respondents also contend that Complainants' allegations are highly speculative, lack the specificity needed to demonstrate a violation of the Act, and that the patterns identified by Complainants do not support any inference of illegality. *Id.*

1 During the 2007-2008 election cycle, the Commission's Reports Analysis Division  
2 ("RAD") sent the Committee multiple Requests for Additional Information ("RFAs") regarding  
3 apparent excessive contributions of the same general type as those identified in the complaints.  
4 While the Committee was responsive to issues raised in the RFAs, a review of Committee  
5 disclosure reports suggests that OFA has accepted, and failed to take timely corrective action  
6 with regard to excessive contributions, which may total between \$1.89 million and \$3.5 million.  
7 See Chart A, *infra*.

8 Based on a review of the complaints, the responses, and other available information,  
9 including the Commission's analysis of disclosure reports, it appears that OFA accepted  
10 excessive contributions that were not refunded or otherwise cured in a timely fashion.  
11 Accordingly, for reasons explained in more detail below, the Commission found reason to  
12 believe that Obama for America and Martin Nesbitt, in his official capacity as Treasurer, violated  
13 2 U.S.C. § 441a(f), and authorized a Section 437g audit.

14 In contrast to the substantial support for allegations relating to excessive contributions,  
15 the allegations that OFA accepted prohibited contributions from foreign nationals (in violation of  
16 Section 441e) and from fictitious names (in violation of Section 441f) are either wholly  
17 speculative or appear to involve sums that are *de minimis* both in terms of dollar amount and as a  
18 percentage of OFA's overall receipts. Accordingly, for reasons explained in more detail below,  
19 the Commission dismissed allegations that Obama for America and Martin Nesbitt, in his official  
20 capacity as Treasurer, violated 2 U.S.C. §§ 441e and 441f.

1 **II. FACTUAL AND LEGAL ANALYSIS**

2 The primary issue in these matters is whether Respondents accepted impermissible  
3 contributions through their online fundraising efforts. Although the Commission has not  
4 mandated specific procedures to verify the identity of an individual making a credit card  
5 contribution over the Internet, it has opined that a committee which intends to solicit and receive  
6 credit card contributions over the Internet must be able to verify the identity of those who  
7 contribute via credit card with the same degree of confidence that is generally provided when a  
8 committee accepts a check via direct mail.<sup>1</sup> Advisory Opinion 2007-30 (Chris Dodd for  
9 President, Inc.); see also Explanation and Justification for Matching Credit Card and Debit Card  
10 Contributions, 64 Fed. Reg. 32394, 32395 (June 17, 1999); Advisory Opinion 1999-09 (Bill  
11 Bradley for President, Inc.); Advisory Opinion 1995-09 (NewtWatch PAC); see also  
12 Commission Guideline for Presentation in Good Order (guidance to presidential campaigns  
13 seeking federal matching funds, presented by the Audit Division and approved by the  
14 Commission in July 2007). In sum, a committee is charged with the same responsibility to "allay  
15 concerns over the receipt of prohibited contributions" regarding its online contributions as its  
16 contributions solicited and received through any other method. *Id.* (quoting Matching Credit  
17 Card and Debit Card Contributions, 64 Fed. Reg. at 32395).

<sup>1</sup> Advisory Opinions have looked favorably upon several methods for notifying contributors of a committee's legal obligations as well as verifying contributors' identities, including: using web page solicitation forms that post clear and conspicuous language informing prospective donors of the Act's source restrictions and contribution limits, requiring a donor to complete and submit for processing a contribution form that includes the contributor's name, contributor's name as it appears on a credit card, billing address associated with the card number, expiration date of the card, contributor's residential address and amount of contribution. See, e.g., AO 2007-30 at 3. The committee should also include procedures that will allow it to screen for contributions made using corporate or business entity credit cards, and a process whereby the donor must attest: (1) the contribution is made from his own funds and not those of another; (2) contributions are not made from general treasury funds of a corporation, labor organization or national bank; (3) donor is not a federal government contractor or a foreign national, but is a citizen or permanent resident of the United States; and (4) the contribution is made on a personal credit card for which the donor, not a corporation or business entity, is legally obligated to pay. *Id.* at 2-4.

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1 As a safeguard against receiving prohibited contributions, the Act's regulations hold the  
2 committee's treasurer "responsible for examining all contributions received for evidence of  
3 illegality." 11 C.F.R. § 103.3(b). While contributions that may "present genuine questions" as  
4 to whether they were made by foreign nationals or other prohibited parties may initially be  
5 deposited into a campaign's depository, the treasurer is charged with making his or her "best  
6 efforts to determine the legality of the contributions." 11 C.F.R. § 103.3(b)(1). If the  
7 contribution cannot be determined to be legal, or is discovered to be illegal even though it "did  
8 not appear to be illegal" at the time it was received, the treasurer must refund the contribution  
9 within thirty (30) days of the date of said discovery. 11 C.F.R. § 103.3(b)(2). By contrast, if the  
10 committee determines that a contribution exceeds the contribution limitations enumerated in  
11 2 U.S.C. § 441a(a)(1), the treasurer has sixty (60) days to refund the excessive contribution, or  
12 obtain a written redesignation or reattribution of the excessive portion. 11 C.F.R.  
13 § 110.1(b)(3)(i).

14 **A. Background**

15 Obama for America is the principal campaign committee for President Barack Obama.  
16 During the 2008 election cycle, OFA, as an authorized candidate committee, was limited to  
17 contributions from individual donors who in the aggregate did not exceed \$2,300 each for the  
18 primary and general elections. 2 U.S.C. § 441a(a)(1)(A). Since filing its Statement of  
19 Organization on January 16, 2007, the Committee raised over \$745 million from over 3.9 million  
20 contributors, approximately \$450 million of which was received in online contributions through  
21 the campaign's website. OFA Response in MURs 6078/6090/6108 at 1-2.

22 Respondents explain that, to handle the unprecedented number of donors, volume of  
23 online contributions and dollars raised, they maintained a comprehensive system to review all

1 online contributions for compliance with the FECA. OFA Response in MURs 6078/6090/6108  
2 at 2-4, OFA Responses in MURs 6139 & 6142 at 2-3. The Committee asserts that its internal  
3 system of review surpassed the procedural requirements for the collection and processing of  
4 contributions set forth in the Act, and that as the volume of contributions increased, the  
5 Committee continually readjusted its procedures to ensure that all contributions received  
6 complied with the Act's requirements. OFA Responses in MURs 6078/6090/6108 at 3-4; OFA  
7 Responses in MURs 6139 & 6142 at 2-3.

8 The consolidated OFA Response for MURs 6078, 6090 and 6108 includes an Affidavit  
9 from the Committee Chief Operating Officer Henry DeSio, who describes the requirements in  
10 the online contribution process that must have been met before the website would accept a  
11 contribution:

- 12 • The Committee online contribution page informed each prospective donor of the  
13 Act's source restrictions, in explicit language displayed in a conspicuous location  
14 that the donor could not miss;
- 15 • No donor could make a contribution without first affirming that the funds were  
16 lawful and consistent with the Act's requirements, by checking a box confirming  
17 that the donor was a United States citizen or permanent resident, that the funds  
18 were not from the treasury of a person or entity who was a federal contractor,  
19 corporation, labor organization or national bank, and were not provided by any  
20 person other than the donor;
- 21 • Donors who entered foreign addresses were required to check a box confirming  
22 that they were either a United States citizen or a permanent resident alien, and  
23 provide a valid U.S. passport number. *Id.* at 3-4; *see also* Affidavit of Henry  
24 DeSio ("DeSio Aff.") ¶¶ 3-6.

25 The DeSio Affidavit goes on to describe the compliance and vetting process that occurred  
26 after the online contributions were processed by a third party vendor and submitted to the  
27 Committee:

- 1       •     At regular intervals the Committee conducted automated searches of its donor  
2       database, which included all contributions (whether raised online or through other  
3       mechanisms), to identify any fraudulent or excessive donations;
- 4       •     Contributions from repeat donors were examined to ensure that the total amount  
5       received from a single donor did not exceed contribution limits; and
- 6       •     As examples of questionable information, erroneous data or fraudulent  
7       contributions were identified, the Committee's automated searches were refined  
8       to query other contributions that might contain similar patterns of erroneous or  
9       fraudulent data. *Id.* at 4.

10       Respondents also deny allegations that the Committee received excessive contributions,  
11       including contributions from its joint fundraising committee, the Obama Victory Fund and  
12       Andrew Tobias in his official capacity as Treasurer, and assert that all contributions were  
13       properly allocated, and refunded, redesignated or reattributed, as appropriated. OFA Responses  
14       in MURs 6139 & 6142 at 2-3.

15  
16       **B.     Excessive Contribution Allegation**

17       **1.     Facts**

18       The complaints involve allegations based on Complainants' direct review of disclosure  
19       reports filed by the Committee as well as information gleaned from online media reports, and  
20       claim that Respondents accepted excessive contributions in addition to knowingly receiving  
21       contributions from prohibited sources. Fling Complaint at 2; RNC Complaint at 1-4; Kotex  
22       Complaint at 1; Daniels Complaint at 1; Moore Complaint at 1. Complainants list hundreds of  
23       individuals whom they claim made contributions exceeding \$4,600 (which would be the  
24       aggregate total of the permissible amounts of \$2,300 each for the primary and general elections)  
25       and contend that this is evidence that the Committee's contribution processes were utterly  
26       lacking in the appropriate internal controls to ensure compliance with the FECA. Fling



1 Complaint at 2; RNC Complaint at 1-4; Kohtz Complaint at 1; Daniels Complaint at 1; Moore  
2 Complaint at 1.

3 Respondents reply that their comprehensive vetting and compliance system was designed  
4 to identify all excessive contributions, including those specifically referenced in the complaints,  
5 and redesignate, reattribute, or refund contributions, as appropriate. OFA Response in MURs  
6 6078/6090/6108 at 5; OFA Responses in MURs 6139 & 6142 at 2. Specifically, the Committee  
7 contends that only 112 of the 602 individuals originally identified in complaints for MURs 6139  
8 and 6142 made contributions that were potentially excessive but later refunded; the rest, they  
9 assert, actually were compliant with the Act. OFA Response in MUR 6139 at 3, OFA Response  
10 in MUR 6142 at 3. Respondents provide attachment spreadsheets that list the individuals they  
11 assert were compliant, as well as those who made potentially excessive contributions that were  
12 later refunded or otherwise cured (some timely and some untimely).<sup>2</sup> OFA Response in MURs  
13 6078/6090/6108 at 5; OFA Response in MUR 6139, Exh. A; OFA Response in MUR 6142, Exh.  
14 A. Respondents argue that their demonstration that most examples of excessive contributions  
15 cited in the initial complaints were either compliant or rectified in a timely manner, is evidence  
16 that there is no need for an investigation of their finances and reporting, and that those matters  
17 should be dismissed.

18 The Commission reviewed the Committee's disclosures for the 2008 election cycle,  
19 which reflect that the Committee reported raising approximately \$745,689,750 during that time  
20 period. The review determined that the Committee may have received between \$1.89 and \$3.5

<sup>2</sup> The complaint in MUR 6142 has been supplemented 38 times, most recently on December 2, 2009, which lists thousands of transactions that are alleged to be questionable and/or represent excessive contributions. The Committee's Response to MURs 6139 and 6142 dated Dec. 22, 2008 addresses none of the transactions specifically identified in the supplements filed up to that date, but was not amended to address the supplemental complaints filed after that date, and offers the same general explanations provided in its response to MURs 6078/6090/6108.

million in excessive contributions during the 2007-2008 cycle. These apparent excessive contributions are reflected in Chart A below.

*Chart A*

Report	Excessive Contributions	Total Contributions Reported
Q1 07	\$103,382	\$25,702,886
Q2 07	\$116,241	\$32,889,836
Q3 07	\$47,239	\$20,652,928
YE 07	\$18,342	\$22,847,367
M2 08	\$35,151	\$38,188,803
M3 08	\$15,302	\$55,444,889
M4 08	\$44,825	\$41,161,694
M5 08	\$26,787	\$30,732,459
M6 08	\$22,287	\$21,953,056
M7 08	\$95,010	\$51,909,906
M8 08	\$359,986	\$50,337,860
M9 08	\$2,295,521 <sup>3</sup>	\$65,090,582
M10 08	\$110,464	\$150,708,708
12G 08	\$27,633	\$35,944,365
30G 08	\$218,000	\$104,124,845
TOTAL	\$3,536,776 <sup>4</sup>	\$745,689,750

The Commission issued numerous RFAs to enable the Committee to explain or rectify its excessive contributions. Though the Committee made significant efforts to identify,

<sup>3</sup> The Commission identified \$2,295,521 in potential excessive contributions based on the M9 Report, which included \$367,166 in excessive contributions from 317 individuals that were not refunded, redesignated or redistributed within 60 days of receipt, plus \$1,928,355 in contributions designated for the 2008 primary election that were reportedly received after the date of the candidate's nomination. A subsequent review of the disclosure reports indicates that approximately \$1,646,236 of these primary-after-primary contributions appear to have been received by the joint fundraising committee before the candidate accepted his party's nomination, but the reported "contribution date" was the date the funds were transferred from OFA to the Committee. Thus, \$1,646,236 in contributions currently categorized as "primary-after-primary" might not be excessive, but were simply reported incorrectly by the Committee. The investigation will clarify whether the Committee properly reported the receipts in its M9 disclosures.

<sup>4</sup> Should the \$2,295,521 in excessive contributions identified by RAD be determined to be over-inclusive due to a reporting error, the excessive contributions for M9 may be reduced to \$649,284 and the Committee's total potential excessive contributions may be reduced to \$1,890,541.

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1 redesignate or refund a significant number of the excessive contributions identified in the  
2 Commission's RFAs, the Committee failed to redesignate, reattribute or refund millions in  
3 excessive contributions in a timely manner.

## 4                   2.     Analysis

5  
6           The FECA provides that no person shall make contributions to a candidate for federal  
7 office or his authorized political committee, which in the aggregate exceed \$2,300 each for the  
8 primary and general elections. 2 U.S.C. § 441a(a)(1)(A). For the 2008 election cycle, the Act  
9 permits a national political party to receive from individuals or persons other than a  
10 multicandidate committee up to \$28,500. 2 U.S.C. § 441a(a)(1)(B). Additionally, a joint  
11 fundraising committee established pursuant to 11 C.F.R. § 102.17, may accept up to \$33,100 per  
12 donor. 11 C.F.R. § 102.17(a). The Act prohibits a candidate or political committee from  
13 knowingly accepting contributions in violation of the contribution limits set forth in the FECA,  
14 see 2 U.S.C. § 441a(f), and where a committee has received an excessive contribution, it has  
15 sixty (60) days to identify and redesignate, reattribute or refund the excessive amount. 11 C.F.R.  
16 § 110.1(b); *see also* discussion, *supra*, pp. 5-6.

17           The complaints made allegations that the Committee received numerous excessive  
18 contributions based on disclosure reports filed with the Commission, but provided no  
19 information as to how or whether a contribution that might appear to be excessive on its face was  
20 resolved. The Committees' responses to the complaints generally aver that it maintained a  
21 robust compliance system for identifying and remedying excessive contributions, but it fails to  
22 explain how, despite this system, many excessive contributions were apparently left unresolved.

23           Based on a review of the Committee's disclosure reports, the amount of unresolved  
24 excessive contributions range between \$1.89 and \$3.5 million which, while less than .5% of the

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1 total contributions received, is a substantial amount in potential violation.<sup>5</sup> Accordingly, the  
2 Commission found reason to believe Obama for America and Martin Nesbitt, in his official  
3 capacity as Treasurer, accepted excessive contributions in violation of 2 U.S.C. § 441a(f) and  
4 authorized an audit under 2 U.S.C. § 437g to work coextensively with the Section 438(b) audit  
5 already underway.

6 **C. Possible Foreign National Contributions**

7 The FECA provides that it is unlawful for a foreign national, directly or indirectly, to  
8 make a contribution or donation of money or other thing of value in connection with a Federal,  
9 State, or local election, or to a committee of a political party and for a federal political committee  
10 to receive or accept such a contribution. 2 U.S.C. § 441e(a)(1) and (a)(2); 11 C.F.R. § 110.20(b).

11 A "foreign national" is an individual, partnership, association, corporation or other entity  
12 organized under the laws of or having its principal place of business in a foreign country.

13 2 U.S.C. § 441e(b). A "foreign national" does *not* include a person who is a citizen, national or  
14 lawful permanent resident of the United States. *Id.*

15 Although the statute is silent as to any knowledge requirement, the Commission's  
16 implementing regulations clarify that a committee can only violate Section 441e with the  
17 *knowing* solicitation, acceptance, or receipt of a contribution from a foreign national. 11 C.F.R.  
18 § 110.20(g). The regulation contains three standards that satisfy the "knowing" requirement:  
19 (1) actual knowledge; (2) reason to know; and (3) willful blindness. 11 C.F.R. § 110.20(a)(4)(i)-  
20 (iii). The reason-to-know standard is satisfied when a known fact establishes "[s]ubstantial

<sup>5</sup> The Commission has pursued civil penalties in enforcement matters involving excessive contributions that are a fraction of the amount identified in this matter. See MUR 5486 (Sharpton) (conciliating 441a(f) violations totaling \$19,500); MUR 5488 (Bradley Smith) (conciliating 441a(f) violations totaling \$40,500); MUR 5496 (Huffman) (conciliating 441a(f) violations totaling \$100,000); MUR 5568 (Empower Illinois) (conciliating 441a(f) violations totaling \$70,000); MUR 5749 (GSP Consulting Corp. PAC) (conciliating 441a(f) violations totaling \$28,800); MUR 5887 (Schwarz for Congress) (conciliating 441a(f) violations totaling \$4,748); MUR 5889 (Republicans for Traumer) (conciliating 441a(f) violations totaling \$17,099).

1 probability" or "considerable likelihood" that the donor is a foreign national. See Explanation  
2 and Justification for Prohibition on Contributions, Donations, Expenditures, Independent  
3 Expenditures and Disbursements by Foreign Nationals, 67 Fed. Reg. 69940, 69941 (quoting  
4 BLACK'S LAW DICTIONARY, 5th Ed. (1979)). The willful blindness standard is satisfied when "a  
5 known fact should have prompted a reasonable inquiry, but did not." See *Id.* at 69940.<sup>6</sup>

6 1. Facts

7 Several of the complaints allege that the Committee violated 2 U.S.C. § 441e by  
8 accepting contributions from foreign nationals. As support for these allegations, different  
9 Complainants focus on the following facts: (1) approximately 10,400 contributors with foreign  
10 addresses gave \$1.3 million to the Committee; (2) approximately 500 contributions from  
11 contributors with foreign addresses were not made in whole dollar amounts (which Complainants  
12 suggest means that the funds had been converted to U.S. dollars from a foreign currency); and  
13 (3) various media outlets reported that foreign nationals may have contributed to the Committee.

14 Complainants argue that there are widespread problems with the Committee's  
15 compliance systems, which warrant investigation into all of the Committee's contributions  
16 received from individuals with foreign addresses. Rling Complaint at 1; RNC Complaint at 1-2;  
17 Kohn Complaint at 1; Daniels Complaint at 1; Moore Complaint at 1. The Complainants who

<sup>6</sup> Before the regulation was revised in 2002, Commission members expressed concerns about the level of scienter required under Section 441e. For example, a Statement of Reasons ("SOR") issued in a Section 441e case decided shortly before revision of the regulation examined the statutory language and legislative history to conclude that despite the absence of precise language of a "knowledge requirement" in the statute, "it would be fundamentally unjust to assess liability on the part of a fundraiser or recipient committee that solicits or receives a contribution if the contribution in fact appears to be from a legal source, especially if initial screening efforts resulted in specific assurances of the contribution's legality." MURs 4530, 4531, 4547, 4642, 4649 (Statements of Reasons by Commissioner Thomas *In re Democratic National Committee, et al.*) at 3. Thus, coupled with the Explanation and Justification issued in November 2002, a knowledge requirement may be inferred based on similar provisions in the Act that specifically included such language despite the absence of any knowledge requirement in the statute. *Id.* at 2 (citing 2 U.S.C. §§ 441f, 441b(6)). See also 11 C.F.R. § 106.3(h)(1), which provides that contributions which did not appear to be from a prohibited source must be returned within a specified period from the date on which the Committee becomes aware of information indicating that the contribution is unlawful.

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1 rely merely on the Committee's receipt of contributions from individuals with foreign addresses  
2 generally provide no additional facts to substantiate their claims these individuals are foreign  
3 nationals, as opposed to eligible donors temporarily living abroad. One complaint points to a  
4 newspaper report that asserts that the Committee received 37,265 contributions that were not in  
5 whole dollar amounts, which the author concludes could be evidence that those contributions  
6 were converted from foreign currencies to the U.S. dollar, and therefore came from foreign  
7 nationals. MUR 6090 Complaint (citing Ex. K). Complainants offer no information to support  
8 the conclusion that such funds were contributed in foreign currencies or that the individuals who  
9 made contributions in foreign currencies were not lawful donors. Finally some of the complaints  
10 cite media reports with anecdotal allegations of foreign nationals having contributed to the  
11 Committee. Examples of these media reports include:

- 12 • A report about a group in Nigeria was reported to have sponsored an event, the  
13 proceeds of which were purportedly going to be donated to the Committee, but  
14 were seized by the government in a fraud investigation. MUR 6090 Complaint at  
15 1-3 (citing Attach. A);
- 16 • Media coverage of a public statement made by Libyan leader Muammar al-  
17 Gaddafi opining that foreign nationals supported candidate Obama and may have  
18 contributed to the Committee. *Id.* (citing Attach. C);
- 19 • Un-~~substantiated~~ allegations that an anonymous FEC analyst informed his superiors  
20 that the Committee had accepted millions of prohibited contributions from foreign  
21 nationals and his warnings went unheeded.<sup>7</sup> *Id.* (citing Attach. D);
- 22 • Reports about two brothers who owned a shop in the Gaza Strip and made bulk  
23 purchases of Obama t-shirts to sell in their store. *Id.* (citing Attach. A, E, F);
- 24 • Article about an Australian man who admitted to knowingly using a fake U.S.  
25 passport number in order to get the Committee's online contribution system to  
26 accept his contribution. *Id.* (citing Ex. H); and
- 27 • Report about and a Canadian man who deliberately made false statements in order  
28 to get the Committee's online contribution system to accept his contribution. *Id.*

<sup>7</sup> Despite efforts by the Commission, the veracity of these allegations has not been confirmed to date.

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1 The Committee maintains that its vetting procedures required online contributors to  
2 confirm citizenship or permanent resident status by checking a box. OFA Response in MURs  
3 6078/6090/6108 at 4. Further, contributors with foreign addresses had to enter a valid U.S.  
4 passport number. *Id.* Finally, the Committee asserts that it maintained a system that at regular  
5 intervals surveyed all contributions received from foreign addresses, personally contacted  
6 contributors who were not known to be U.S. citizens or lawful permanent residents, and required  
7 the submission of valid U.S. passport information. *Id.* at 5.

## 8 2. Analysis

9 The allegation that Respondents knowingly accepted contributions from foreign  
10 nationals, or failed to refund contributions after becoming aware of a basis for questioning  
11 whether the contributions were from a permissible source, is not supported by the available  
12 information. As discussed below, each of the three principal methods of proof relied upon in the  
13 complaints is flawed.

14 Complainants added up all contributions from donors with foreign addresses and alleged  
15 that all or significant numbers of those contributions must have come from foreign nationals  
16 because media reports had identified four foreign nationals who were alleged to have been  
17 contributors. RNC Complaint at 1. The Committee received approximately \$1,314,717 in  
18 contributions from 10,463 individuals with foreign addresses. The fact that these contributors  
19 listed foreign addresses is not, as Complainants claim, *prima facie* evidence establish that the  
20 contributors are foreign nationals or that their contributions should be suspect. 11 C.F.R.  
21 § 110.20(a)(4)(i). Although Complainants argue for a comprehensive review of all contributors  
22 with foreign addresses, neither the media reports nor the complaints offer any specific  
23 information that would suggest that any of the contributors with foreign addresses, other than the

1 four specifically identified in the media reports, are not American citizens living abroad, who are  
2 entitled to contribute to federal political committees.

3 Similarly, the argument that the presence of contributions in odd (non-whole dollar)  
4 amounts is *prima facie* evidence that a contribution might have come from an impermissible  
5 foreign source is incorrect. First, there is a wide variety of explanations for a contribution to be  
6 in non-whole dollar amounts, other than being a foreign currency. Second, even if the  
7 contribution was made using a foreign currency, there is no legal presumption that the use of  
8 foreign currency is sufficient to establish that a contributor is a foreign national. A U.S. citizen  
9 living abroad, who is entitled to make contributions, might be expected to use a credit card  
10 account or a bank account based on the currency of the country in which they temporarily reside.  
11 Neither the complaints nor media reports provide any information that would serve as reasonable  
12 cause to question the citizenship of a contributor based solely on the amount of a contribution.

13 While information that a contribution is received from a foreign address, foreign bank  
14 and/or in a currency other than U.S. dollars might serve as pertinent information in examining  
15 the contribution, the mere presence of such indicators does not establish reason to believe that  
16 the Committee violated the prohibition against receiving contributions from foreign nationals.  
17 Rather, a Committee need only make a "reasonable inquiry" to verify that the contribution is not  
18 from a prohibited source to satisfy the Act's compliance regulations. 11 C.F.R. § 110.20(a)(7).  
19 Here, there is evidence that the Committee made reasonable inquiries into the source of those  
20 funds by: (1) informing website users of the appropriate legal requirements for making  
21 contributions; (2) requiring contributors who used the website to proffer the appropriate  
22 certifications before processing their contributions; and (3) maintaining an internal system to  
23 review all contributions received from foreign addresses for compliance with the FECA and its



1 regulations. OFA Response in MURs 6078/6090/6108 at 4-5. There is also evidence that the  
2 Committee's internal controls followed the Act's "safe harbor" guidelines by requiring donors  
3 who attended fundraising events located outside of the United States or made contributions  
4 online using foreign addresses to provide a valid U.S. passport number. *Id.*; see 11 C.F.R.  
5 § 110.20(a)(7) ("[A] person shall be deemed to have conducted a reasonable inquiry if he or she  
6 seeks and obtains copies of current and valid U.S. passport papers.").

7 The Commission reviewed the contributions received by the Committee from individuals  
8 with foreign addresses who contributed to OFA during the primary and general election months  
9 of February 2008 and August 2008, respectively.<sup>8</sup> This review provided insight into how the  
10 Committee's compliance system was working, whether it was effectively identifying potentially  
11 prohibited contributions, and whether corrective action was taking place to resolve questionable  
12 contributions. In addition to specific individuals identified in the complaints (see discussion  
13 below), the Commission's review found only eight contributors living abroad (who contributed a  
14 total of \$2,147) that failed to give personal information required for the OFA disclosure reports.  
15 Consistent with the assertions in the Committee's responses, the Commission's review found that  
16 contributors outside of the United States were required to affirm that they were United States  
17 citizens. See OFA Response in MURs 6078/6090/6108 at 4-5. In fact, the website would not  
18 accept contributions from individuals outside of the United States without certification that they  
19 were citizens or legal permanent residents. *Id.* Contributors outside of the United States were

<sup>8</sup> The Commission has approved the use of examining samples in order to ascertain whether excessive and prohibited contribution violations are substantial enough to warrant further inquiry. See, e.g., 11 C.F.R. §§ 90.7.2(f)(1) and 90.18.1(f)(1) (approving the use of sampling in the audit process to determine whether excessive and prohibited contributions are significant enough to warrant referral for enforcement). Here, the Commission opted to review a sample of disclosure reports at the reason to believe stage in order to ascertain whether the violations of the Act alleged in the complaint are indicative of broader flaws in the Committee's compliance system and/or are significant enough to recommend that an investigation of the violations is warranted.

1 typically employed by the United States government or military, or working in the international  
2 offices of American corporations, or for American non-profit, human rights or religious  
3 organizations.

4 The contributions cited as examples of Section 441e violations in the complaints are  
5 insufficient to support a reason to believe finding for the following reasons:

- 6 • There is no support for the inference that the Committee received contributions or  
7 was in any way connected to the Nigerian fundraiser or its coordinators, as the  
8 same media reports indicate that the Nigerian government seized the funds raised  
9 and are investigating the matter as a fraudulent scheme. RNC Complaint, Exh. A.
- 10 • There is no information supporting the allegation that the general comments made  
11 by Libyan leader Muammar al-Gaddafi claiming, "[People in the Arab and  
12 Islamic world] welcomed [Barack Obama] and prayed for him and ... may even  
13 have been involved in legitimate contribution campaigns to enable him to win the  
14 American presidency" are related to any identifiable contributions or fundraising  
15 efforts for the Committee. *Id.*
- 16 • The allegations that contributions received by the Committee, which were not  
17 made in whole dollar amounts must have been made in foreign currency and  
18 therefore have originated from foreign sources, is also purely speculative, as the  
19 conversion of monies from one currency to another is not evidence that the  
20 individuals that were the source of the funds were foreign nationals. *Id.*
- 21 • The Australian man cited in the media report admits (in the same report) that he  
22 knowingly made the illegal contribution through bypassing the online security  
23 protocols by entering a false passport number and fraudulently certifying that he  
24 was an American citizen living abroad, in order to get the website to accept his  
25 contribution. RNC Complaint, Exh. H, OFA Response in MURs 6078/6090/6108  
26 at 4.
- 27 • While the Canadian donor did not admit to making false statements, he also  
28 denied remembering whether he certified that he was a citizen and stated that he  
29 later contacted the Committee to request a refund. RNC Complaint, Exh. H. The  
30 Committee asserts that the website did require a certification of citizenship to  
31 make contributions from a foreign address and the contribution from the donor  
32 has since been refunded. OFA Response in MURs 6078/6090/6108 at 4.

33 See OFA Response in MURs 6078/6090/6108, Exh. A.

1 According to media reports, brothers Hosam and Monir Edwan bought t-shirts from the  
2 Committee's website to sell in their Gaza store, the proceeds of which constituted contributions  
3 to OFA from the Edwans totaling \$6,945 and \$24,770, respectively.<sup>9</sup> RNC Complaint, Exh. A.  
4 The same report indicates that the Edwan brothers inserted the abbreviation "GA" in the address  
5 line reserved for the name of the contributor's state of residence, which the Committee might  
6 have mistaken to stand for "Georgia" rather than "Gaza." *Id.* The report also cites a campaign  
7 official who states that until the media identified the Edwan brothers as being residents of Gaza,  
8 the Committee had no reason to believe the Edwans lived outside of the United States. *Id.*

9 The Act provides that where a contribution does not present a genuine question of  
10 whether it might be prohibited by the Act, but is later discovered to be illegal, a treasurer has  
11 thirty (30) days from the date on which the illegality is discovered to refund the contribution.  
12 11 C.F.R. § 103.3(b)(2). Here, the Edwan brothers made 28 t-shirt purchases, 22 of which were  
13 refunded within 30 days of receipt.<sup>10</sup> Refunds of the other six purchases (for \$4,130) were made  
14 within two weeks of the first media report identifying the brothers as foreign nationals.

15 While it is unclear when the Committee discovered all of the contributors cited in the  
16 media reports were foreign nationals, the Committee did refund all of the contributions within 30  
17 days of those reports or the information about the identity of these contributors becoming public.  
18 Moreover, the fact that a review of the Committee's disclosure reports has identified only \$2,147

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<sup>9</sup> It is well established that the proceeds from the purchase of fundraising items are considered to be campaign contributions. 11 C.F.R. § 100.53; see also AO 1975-15 (Wallace) (concluding that the full amount paid by a purchaser to a political committee or candidate for a fundraising item is a contribution); AO 1979-17 (RNC) (citing AO 1975-15) (The fact that the contributor received something of value in exchange for a political contribution does not change the character of the activity from a political contribution into a commercial sale/purchase transaction).

<sup>10</sup> Hosam Edwan made seven contributions, all of which were refunded. Only the four smallest transactions (\$187, \$1,217, \$884 and \$906) were refunded outside the 30-day window. Monir Edwan made 21 contributions, all but two of which (for \$94 and \$1,290) were refunded within the 30-day window. *Id.* A total of \$4,130 of the contributions made by the Edwans was refunded outside the 30-day window, but within two weeks of the first media report.

1 in contributions from eight donors with foreign addresses that might be questionable, with no  
2 additional information on whether they are in fact foreign nationals, mitigates against finding  
3 reason to believe that the Committee violated 2 U.S.C. § 441e.

4 Because the potential Section 441e violations are limited in scope and amount (\$6,277)  
5 and because there is insufficient information to suggest that the Committee acted unreasonably in  
6 relying on the information provided by contributors affirming that they were United States  
7 citizens, the Commission concluded that opening an investigation into this issue would be an  
8 inefficient use of its limited resources. *See Heckler v. Chaney*, 470 U.S. 821 (1985); MUR 5950  
9 (Hillary Clinton for President) (Factual and Legal Analysis dismissing Section 441e violation to  
10 preserve resources where amount in potential prohibited contributions was minimal (\$1,000)  
11 compared to total contributions received, and funds had been refunded before the complaint was  
12 filed).

13 Accordingly, the Commission dismissed allegations that Obama for America and Martin  
14 Nesbitt, in his official capacity as Treasurer, violated 2 U.S.C. § 441e by accepting contributions  
15 from foreign nationals.

16 **D. Possible Contributions from Unimowu Individuals**

17 The Act provides that no person shall make a contribution in the name of another person,  
18 and no person shall knowingly accept a contribution made by one person in the name of another.  
19 See 2 U.S.C. § 441f. A Committee has thirty days from the date that a prohibited contribution is  
20 made or discovered to have been made to refund the impermissible contribution. 11 C.F.R.  
21 § 103.3(b)(2).

22 The complaints allege that individuals made contributions to the Committee using  
23 fraudulent or fictitious names, and the Committee's online fundraising mechanism provided no

1 internal controls to circumvent the receipt of such prohibited contributions. RNC Suppl.  
2 Complaint at 3-4. Different Complainants present two types of arguments for why the  
3 Committee should have been on immediate notice that certain contributions did not come from  
4 legitimate sources. First, some of the complaints contend that certain contributions were linked  
5 to names that were clearly fictitious, and the fact that such contributions were processed by the  
6 Committee's online fundraising system is evidence of widespread failure in its compliance  
7 system and warrants investigation. Second, one of the later complaints (MUR 6214) points to a  
8 range of anomalies in the patterns of the contributions attributed to particular individuals as  
9 being sufficiently unusual and unlikely as to put the Committee on notice that these contributions  
10 were illegitimate.

11 **1. Facts**

12 The complaints cite media reports identifying 11 individuals whose names were listed on  
13 the Committee's disclosure reports as contributors, but later were determined to have submitted  
14 fictitious or fraudulent names, addresses or credit card information. Examples of these  
15 individuals include:

- 16 • Good Will – an individual who listed his name as "Good Will," his employer as  
17 "Loving," occupation as "You" and who provided an address that turned out to be  
18 far a Good Will Industries charity office in Austin, TX. Reportedly, no one by  
19 the name of Good Will works at the office. Good Will made over 780  
20 contributions in \$25 increments between March 2008 and April 2008, totaling  
21 over \$19,500;
- 22 • Doodad Pro – an individual who listed his name as "Doodad Pro," his residence  
23 as Nando, NY, occupation as "Loving," and employer as "You" made over 850  
24 contributions in \$25 increments between November 2007 and April 2008, totaling  
25 over \$21,250;
- 26 • Persons with fictional addresses – some individuals provided questionable names  
27 and fictitious addresses, including "Test Person" residing in Some Place, UT,  
28 "Jockim Alberton" residing at a fictional address in Wilmington, DE, "Derty

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West" and "Derty Poiuuy" both residing in reww, ME and "fhdfhdfh" residing in Erial, NJ; and

- Persons with obvious fictional names – some individual donors provided nonsensical names including, "Hbkjb, jkbkj," "Jgtj Jfggjfgj," "Dahrudhu Hdusahfd," "Uadhshgu Hdunah," "Edrty Eddty" and "Es Esh."

During the course of its compliance process, and before the names were made public in media reports or complaints, the Committee asserts that had already identified many of these same contributions as being of questionable legitimacy. Disclosure reports indicated that several of the "contributions" made by fictitious donors cited in the complaints either were never accepted due to invalid information (e.g., invalid credit card or banking information) or were refunded immediately. In other instances, where contributions were accepted, refunds occurred on a continuous basis. For instance, in the case of Doodad Pro and Good Will, who made hundreds of contributions in small increments, refunds were done on a rolling basis before their contributions appeared in media reports. Further, most of the refunds were completed to almost all of these prohibited contributors within weeks of the first media reports and/or the initial complaints filed with the Commission.

The Complaint in MUA 6214 makes an extensive and detailed analysis of various patterns in the Committee's receipts. This complaint alleges that the Committee failed to make immediate use of an Address Verification System to confirm that each contributor's reported address information matched the address information for the credit card used to make the contribution, which allowed the Committee to accept online contributions in transactions that would have been rejected by other vendors accepting credit card payments over the internet. This complaint suggests that the absence of this safeguard raises questions as to whether the Committee adequately verified the true sources for online contributions it received via credit card. In addition, this complaint identifies the following contribution patterns which it deemed

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1 suspicious: 1) Non-Dollar Donations that were not in whole dollar amounts; 2) Non-Traditional  
2 Donations that were in whole dollar amounts, but not in multiples of \$5; 3) Multiple Day  
3 Donations where a donor has two or more donations on the same day; 4) Duplicate Donations  
4 where the donors appeared to make two or more contributions of the same amount on the same  
5 day. Complainant alleges that the Committee accepted an unusually large number of  
6 contributions that fit into these patterns, which it deemed to be suspicious and merit further  
7 review.

## 8 2. Analysis

9 As discussed above, the Commission has provided guidance to committees that they may  
10 use Internet fundraising so long as committees use reasonable safeguards to enable them to  
11 verify the identity of contributors and screen for impermissible contributions with the same level  
12 of confidence that applies to other methods of fundraising, and act consistently with Commission  
13 regulations. See AO 1999-09 (Bill Bradley for President, Inc.). Complainants contend that the  
14 Committee's acceptance of online contributions from the unknown persons identified in the  
15 complaints is clear evidence that it had no control mechanisms in place to catch third party fraud.  
16 Fling Complaint at 1; RNC Complaint at 3-4; Kohitz Complaint at 1. Consequently, the  
17 complaints argue, an investigation of all contributions is warranted. *Id.* RNC Suppl. Complaint  
18 at 3-5.

19 Respondents assert that the compliance system the Committee maintains is designed to  
20 identify individuals like those cited in the complaint and refund their contributions if they are  
21 unlawful. OFA Response in MURs 6078/6090/6108 at 4. The Committee asserts that its  
22 internal system runs regular searches of its donor database in order to identify information that  
23 contributions may be fraudulent. *Id.* at 5. The Committee also asserts that through its vetting

1 and compliance system, as individuals who provided fictitious information are identified,  
2 subsequent searches are modified to look for similar individuals or patterns of fraudulent donors  
3 that were previously identified. *Id.* Regarding the individuals identified in the complaint,  
4 Respondents provide information that most of the fraudulent contributions from these individuals  
5 had been identified and refunded before the complaints were filed. *Id.*

6 The complaint cites the names of eleven individuals with alleged fictitious names that  
7 allegedly made contributions to the Committee. Only three of these individuals gave  
8 contributions that were actually received and aggregated over \$1,000; they include:

- 9 • "Doodad Pro" made 850 contributions in \$25 increments totaling \$21,250,
- 10 • "Good Will" made 780 contributions in \$25 increments totaling \$19,500, and
- 11 • "Hbkjb, jkbkj" made a single contribution of \$1,077.23.

12 The "Doodad Pro" and "Good Will" contributions were refunded on a continuous basis either  
13 before or within 30 days of the initial complaint in this matter, though many refunds were not  
14 made within 30 days of the initial receipt of the contribution. The single "Hbkjb, jkbkj"  
15 contribution was refunded within 38 days of receipt. Contributions from the remaining eight  
16 donors cited in the complaint totaled approximately \$1,500; none of which has been refunded.

17 In order to ascertain whether there was a potential system breakdown that might have led  
18 the Committee to accept large numbers of contributions from unknown persons, the Commission  
19 reviewed a sampling of contributions to the Committee in the primary and general election  
20 months of February 2008 and August 2008, respectively. During the sample period, the  
21 Committee received a combined total of \$73,976,663 in contributions from over 170,000  
22 contributors. The Commission also reviewed complaints, disclosure reports and media reports  
23 for individuals whose information appeared to be incomplete, fictitious or otherwise unverified



1 as belonging to actual persons, as well as whether suspect contributions were accepted, verified  
2 and, if appropriate, timely refunded by the Committee.

3 In addition to the contributors cited in the complaints, only six other contributors to OFA  
4 whose names might have been fictitious based on the spelling or other information were  
5 identified. These six contributors gave approximately \$17,445 to the Committee, \$14,476 of  
6 which remains unrefunded. Thus, the complaints and the Commission's review identify a total  
7 of 17 contributors with potentially fictitious names who gave a total of \$61,472 in contributions  
8 to the Committee, \$15,676 of which has yet to be refunded.

9 The Commission determined that dismissal of these allegations is appropriate because (1)  
10 the alleged breakdown in the Committee's compliance system is not borne out by the available  
11 information about the scope and amount of the contributions the Committee received from  
12 allegedly unknown persons, and (2) the majority (approximately 75%) of the prohibited  
13 contributions received from the fictitious individuals cited in the complaint and identified  
14 through the Commission's review have been refunded.

15 For these reasons, the Commission determined it would not be an efficient use of its  
16 resources to open an investigation into this issue with respect to the Committee. *See Heckler v.*  
17 *Chaney*, 470 U.S. 821 (1985); MUR 5960 (Hillary Clinton for President) (Factual and Legal  
18 Analysis dismissing Section 441e violation to preserve resources where prohibited contributions  
19 were refunded before the complaint was filed).

20 Accordingly, the Commission dismissed allegations that Obama for America and Martin  
21 Nesbitt, in his official capacity as Treasurer, violated 2 U.S.C. § 441f by accepting contributions  
22 from unknown persons in the name of another.

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**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

**RESPONDENTS:** Obama for America and MURs: 6078/6090/6108/6139/6142/6214  
Martin Nesbitt, as Treasurer

**I. INTRODUCTION**

In August 2010, the Federal Election Commission ("the Commission") found reason to believe that OFA violated the Federal Election Campaign Act of 1971, as amended, ("the Act" or "FECA") by accepting during the 2007-2008 election cycle an unknown number of excessive contributions in violation of 2 U.S.C. § 441a(f). *See* OFA Factual and Legal Analysis, dated September 7, 2010 ("F&LA").<sup>1</sup> In the F&LA, relying on information compiled by the Reports Analysis Division ("RAD"), the Commission found that OFA may have accepted between \$1.89 and \$3.5 million in excessive contributions. The Commission also found that OFA might have misreported the original date of receipt for certain primary election contributions made through its joint fundraising representative, the Victory Fund,<sup>2</sup> which caused those contributions to appear as "primary-after-primary" excessive contributions (*i.e.*, primary contributions made after the date of the primary election). *Id.* at 8 n.3.

In response to the Commission's findings, OFA asserted that \$1.6 million in primary contributions received through the Victory Fund were not excessive. *See* OFA Letter from Judith Corley dated November 12, 2010 (responding to RTB findings). In fact, OFA explained, these contributions appeared to be "primary-after-primary" excessive contributions because, as it conceded, OFA misreported these contributions' original date of receipt. *Id.* Further, the only explanation OFA offered as to why it misreported the original date of receipt for contributions

<sup>1</sup> The Commission dismissed allegations that OFA violated 2 U.S.C. §§ 441e and 441f.

<sup>2</sup> The Victory Fund was established pursuant to 11 C.F.R. § 102.6. Its participants were OFA and the Democratic National Committee.

1 received through the Victory Fund was that the campaign staff understood it was reporting the  
2 transfers in the correct manner. *Id.* See also OFA Letter from Judith Corley to OGC dated  
3 March 1, 2011.

4 **II. FACTUAL AND LEGAL ANALYSIS**

5 The investigation and Section 437g audit revealed that OFA failed to report correctly the  
6 original dates on which \$85,158,116 in contributions were received by OFA's joint fundraising  
7 representative, the Victory Fund, in violation of 2 U.S.C. § 434(b) of the Act.

8 The Act requires all political committees to publicly report all of their receipts and  
9 disbursements. See 2 U.S.C. § 434. Each report must disclose for the reporting period and  
10 calendar year, the total amount of all receipts, and the total amount of all disbursements.  
11 See 2 U.S.C. § 434(b)(2), (4) and 11 C.F.R. § 104.3(a), (b). The Act requires that an authorized  
12 committee of a candidate report the amount of all receipts from transfers by affiliated  
13 committees, as well as the identity of the affiliated committee and date(s) of transfer. See  
14 2 U.S.C. § 434(b)(2)(F), (3)(D); 11 C.F.R. §§ 102.17(c)(3)(iii) and 102.17(c)(8)(i)(B). See also  
15 11 C.F.R. §§ 104.3(a)(4) and 104.8.

16 Commission regulations permit political committees to engage in joint fundraising with  
17 other political committees or with unregistered committees or organizations. See 11 C.F.R.  
18 § 102.17. After a joint fundraising representative distributes the net proceeds, a participating  
19 political committee is required to report its share of funds received as a transfer-in from the  
20 fundraising representative. See 11 C.F.R. § 102.17(c)(8)(i)(B). For contribution reporting and  
21 limitation purposes, the date a contribution is received by the fundraising representative – not the

1 date received by the recipient political committee – is the date that the contribution is received by  
2 the participating political committee. See 11 C.F.R. §§ 102.17(c)(3)(iii) and 102.17(c)(8).<sup>3</sup>

3 During the 2008 election cycle, OFA received \$85,158,116 in transfers from the Victory  
4 Fund. These transfers were made on various dates between June 30 and November 3, 2008.  
5 OFA correctly reported the dates it received transfers from its joint fundraising representative.  
6 But OFA did not correctly report the original dates of receipts required by 2 U.S.C.  
7 § 434(b)(2), (4) and 11 C.F.R. §§ 104.3(a), (b) and 102.17(c).

8 The Commission initially brought this problem to OFA's attention in an October 2008  
9 RFAI, which questioned \$1,936,829 in primary contributions that were identified as possibly  
10 excessive because OFA received the transfer of funds after the date of the candidate's  
11 nomination. See Request for Additional Information (Oct. 14, 2008). The RFAI sought  
12 clarification as to whether the contributions were "incompletely or incorrectly reported." *Id.*  
13 The Commission raised this same issue in the F&LA, noting that certain excessive contributions  
14 may have been misreported as having been received after the date of the primary. See F&LA  
15 at 8 n.3.

16 OFA admits that, contrary to the Commission's regulations, it erroneously reported the  
17 dates of transfers from the Victory Fund as the dates of receipt for those contributions and failed  
18 to report the original dates of receipt of the contributions by the Victory Fund. Letter from J.  
19 Corley to OGC dated March 1, 2011 (stating "The Committee began reporting transfers from a  
20 joint fundraising committee on July 20, 2008. It reported six (6) additional transfers during 2008  
21 and 2009 . . . All of the transfers (except one) [citation omitted] were reported in the same way –  
22 as of the date of the transfers – based on an understanding of the campaign staff that this was the

<sup>3</sup> The participating political committee is required to report the original date of receipt of the proceeds only after the funds have been transferred from the fundraising representative. *Id.*

1 correct method for reporting.”). *See also* Letter from J. Corley to OGC dated November 12,  
2 2010 (acknowledging “the overwhelming majority of these ‘Primary-after-Primary  
3 contributions’ were actually received by the joint fundraising committee before President Obama  
4 accepted his party’s nomination”). By way of explanation, OFA responds only that it was “in  
5 regular contact with the FEC’s Reports Analysis Division [ ] to clarify reporting issues[, and] . . .  
6 RAD staff never raised any issue with them regarding the method they were using to report the  
7 transfers.” Letter from J. Corley to OGC dated March 1, 2011.

8       OFA’s explanation does not alter the fact that it failed to report the dates on which the  
9 Victory Fund originally received contributions totaling \$85,158,116. Accordingly, the  
10 Commission found reason to believe that Obama for America and Martin Nesbitt, in his official  
11 capacity as treasurer, violated 2 U.S.C. § 434(b).

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**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

**RESPONDENTS:** Obama Victory Fund and  
Andrew Tobias, as Treasurer

**MURs: 6139 & 6142**

**I. INTRODUCTION**

These matters involve overlapping allegations that the Obama Victory Fund and Andrew Tobias, in his official capacity as Treasurer ("OVF" or the "Victory Fund"), a joint fundraising committee formed by Obama for America and Martin Nesbitt, in his official capacity as Treasurer ("OFA") and the Democratic National Committee, accepted various excessive and/or prohibited contributions in violation of the Federal Election Campaign Act of 1971, as amended, ("FECA" or "the Act").

The complaints vary in their approach to presenting similar allegations. While some of the complaints rely primarily on media reports regarding anecdotal examples of allegedly suspicious online fundraising transactions, *see* MURs 6078/6090/6108, other complaints provide a listing of transactions that are alleged to be part of suspicious patterns in OVF's fundraising receipts. *See* MURs 6139, 6142, 6214. Rather than attempting to address all of the transactions being questioned, OVF focuses on its comprehensive compliance system, and asserts that this system allowed it to identify and take appropriate corrective action as to all contributions for which there were genuine questions as to possible illegality. *See* OVF Responses in MURs 6139 & 6142. Respondents assert that all genuinely excessive and prohibited contributions detailed in the complaints have been refunded. Respondents also contend that Complainants' allegations are highly speculative, lack the specificity needed to demonstrate a violation of the Act, and that the patterns identified by Complainants do not support any inference of illegality. *Id.*

1        There are no indications that the Victory Fund accepted excessive contributions or  
2        contributions from foreign nationals, or misreported disbursements to OFA. Accordingly, the  
3        Commission found no reason to believe that Obama Victory Fund and Andrew Tobias, in his  
4        official capacity as Treasurer, violated 2 U.S.C. §§ 441a(f), 441e or 434(b). Although the  
5        Obama Victory Fund and Andrew Tobias, in his official capacity as Treasurer, may have  
6        accepted contributions from an unknown donor, the Commission dismissed this potential  
7        violation of 2 U.S.C. § 441f because the amount at issue did not warrant further Commission  
8        resources.

9        **II. FACTUAL AND LEGAL ANALYSIS**

10       The primary issue in these matters is whether Respondents accepted impermissible  
11       contributions through their online fundraising efforts. Although the Commission has not  
12       mandated specific procedures to verify the identity of an individual making a credit card  
13       contribution over the Internet, it has opined that a committee which intends to solicit and receive  
14       credit card contributions over the Internet must be able to verify the identity of those who  
15       contribute via credit card with the same degree of confidence that is generally provided when a  
16       committee accepts a check via direct mail.<sup>1</sup> Advisory Opinion 2007-30 (Chris Dodd for  
17       President, Inc.); *see also* Explanation and Justification for Matching Credit Card and Debit Card  
18       Contributions, 64 Fed. Reg. 32394, 32395 (June 17, 1999); Advisory Opinion 1999-09 (Bill

<sup>1</sup> Advisory Opinions have looked favorably upon several methods for notifying contributors of a committee's legal obligations as well as verifying contributors' identities, including: using web page solicitation forms that post clear and conspicuous language informing prospective donors of the Act's source restrictions and contribution limits, requiring a donor to complete and submit for processing a contribution form that includes the contributor's name, contributor's name as it appears on a credit card, billing address associated with the card number, expiration date of the card, contributor's residential address and amount of contribution. *See, e.g.,* AO 2007-30 at 3. The committee should also include procedures that will allow it to screen for contributions made using corporate or business entity credit cards, and a provision whereby the donor must attest (1) the contribution is made from his own funds and not those of another; (2) contributions are not made from general treasury funds of a corporation, labor organization or national bank; (3) donor is not a federal government contractor or a foreign national, but is a citizen or permanent resident of the United States; and (4) the contribution is made on a personal credit card for which the donor, not a corporation or business entity, is legally obligated to pay. *Id.* at 2-4.

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1 Bradley for President, Inc.); Advisory Opinion 1995-09 (NewtWatch PAC); *see also*  
2 Commission Guideline for Presentation in Good Order (guidance to presidential campaigns  
3 seeking federal matching funds, presented by the Audit Division and approved by the  
4 Commission in July 2007). In sum, a committee is charged with the same responsibility to "allay  
5 concerns over the receipt of prohibited contributions" regarding its online contributions as its  
6 contributions solicited and received through any other means. *Id.* (quoting Matching Credit  
7 Card and Debit Card Contributions, 64 Fed. Reg. at 32395).

8 As a safeguard against receiving prohibited contributions, the Act's regulations hold the  
9 committee's treasurer "responsible for examining all contributions received for evidence of  
10 illegality." 11 C.F.R. § 103.3(b). While contributions that may "present genuine questions" as  
11 to whether they were made by foreign nationals or other prohibited parties may initially be  
12 deposited into a campaign's depository, the treasurer is charged with making his or her "best  
13 efforts to determine the legality of the contributions." 11 C.F.R. § 103.3(b)(1). If the  
14 contribution cannot be determined to be legal, or is discovered to be illegal even though it "did  
15 not appear to be illegal" at the time it was received, the treasurer must refund the contribution  
16 within thirty (30) days of the date of said discovery. 11 C.F.R. § 103.3(b)(2). By contrast, if the  
17 committee determines that a contribution exceeds the contribution limitations enumerated in  
18 2 U.S.C. § 441a(a)(1), the treasurer has sixty (60) days to refund the excessive contribution, or  
19 obtain a written redesignation or reattribution of the excessive portion. 11 C.F.R.  
20 § 110.1(b)(3)(i).

21 **A. Background**

22 The Obama Victory Fund is a joint fundraising committee established pursuant to  
23 11 C.F.R. § 102.17, whose participants were Obama for America ("OFA"), the principal



1 campaign committee for President Barack Obama during the 2008 election cycle, and the  
2 Democratic National Committee ("DNC"). The Victory Fund filed its Statement of Organization  
3 on June 10, 2008 and received over \$198 million in contributions during the 2007-2008 election  
4 cycle. During the 2008 election cycle, as a joint fundraising committee established pursuant to  
5 11 C.F.R. § 102.17, the Victory Fund was permitted to accept contributions up to the maximum  
6 combined limits of the participating committees, which in this case would be \$33,100 per donor  
7 (the OFA limit of \$2,300 each for the primary and general elections and the DNC limit of  
8 \$28,500). 11 C.F.R. § 102.17(a).

9 **B. Excessive Contribution Allegation**

10 **1. Facts**

11 The complaints involve allegations based on Complainants' direct review of disclosure  
12 reports filed by the Victory Fund as well as information gleaned from online media reports, and  
13 claim that Respondents accepted excessive contributions in addition to knowingly receiving  
14 contributions from prohibited sources. Daniels Complaint at 1; Moore Complaint at 1.  
15 Complainants list hundreds of individuals whom they claim made contributions exceeding  
16 \$4,600 (which would be the aggregate total of the permissible amounts of \$2,300 each for the  
17 primary and general elections) and contend that this is evidence that the Victory Fund  
18 contribution processes were utterly lacking in the appropriate internal controls to ensure  
19 compliance with the FECA. Daniels Complaint at 1; Moore Complaint at 1.

20 The Victory Fund denies the allegations in the complaints and contends that it maintained  
21 the appropriate procedures to ensure that contributions received by the Victory Fund were  
22 properly allocated and did not exceed contribution limits. OVF Responses in MURs 6139 &  
23 6142 at 2. Moreover, the Victory Fund asserts that to ensure that contributors did not exceed

1 applicable contribution limits, the Victory Fund verified all contributions it received with the  
2 donor records for OFA and the DNC. *Id.* If any contribution aggregated to exceed applicable  
3 limits to OFA, the excessive amount was first reallocated to the DNC; if after the DNC  
4 reallocation the contributions still exceeded applicable limits, the excessive amount was refunded  
5 to the contributor. *Id.* at 3.

6                   2.     **Analysis**  
7

8           The FECA provides that no person shall make contributions to a candidate for federal  
9 office or his authorized political committee, which in the aggregate exceed \$2,300 each for the  
10 primary and general elections. 2 U.S.C. § 441a(a)(1)(A). For the 2008 election cycle, the Act  
11 permits a national political party to receive from individuals or persons other than a  
12 multicandidate committee up to \$28,500. 2 U.S.C. § 441a(a)(1)(B). Additionally, a joint  
13 fundraising committee established pursuant to 11 C.F.R. § 102.17, may accept up to \$33,100 per  
14 donor. 11 C.F.R. § 102.17(a). The Act prohibits a candidate or political committee from  
15 knowingly accepting contributions in violation of the contribution limits set forth in the FECA,  
16 see 2 U.S.C. § 441a(f), and where a committee has received an excessive contribution, it has  
17 sixty (60) days to identify and redesignate, reattribute or refund the excessive amount. 11 C.F.R.  
18 § 110.1(b); see also discussion, *supra*, pp. 5-6.

19           The Victory Fund denies allegations that any of its donors made excessive contributions.  
20 OVF Responses in MURs 6139 & 6142 at 2. The Victory Fund accurately notes that it is not  
21 subject to the \$2,300 per election contribution limit, as asserted in the complaint, rather it is  
22 subject to the \$33,100 contribution limit reserved for joint fundraising committees. *Id.*  
23 Moreover, the Victory Fund avers that it has procedures to ensure that its donors do not exceed  
24 applicable contribution limits, which include matching all contributions it received to the donor

1 records of OFA and the DNC. *Id.* The response states that any contributions the Victory Fund  
2 received that might have been excessive when aggregated with prior contributions to OFA were  
3 either reallocated to the DNC or refunded to the contributor. *Id.*

4 The Commission reviewed the information submitted in the complaints and responses in  
5 MURs 6139 and 6142 as well as the disclosure reports filed by the Victory Fund and determined  
6 that Complainants' allegations appear to rely on the mistaken belief that the Victory Fund is  
7 subject to the individual contribution limit of \$2,300 per election for candidates or candidate  
8 committees, as set forth in Section 441a(a)(1)(A). In fact, as a joint fundraising committee, the  
9 Victory Fund is subject to the \$33,100 per individual contribution limit set forth in 11 C.F.R.  
10 § 102.17. None of the individuals cited in the complaints exceeded this limit. Thus, the  
11 information Complainants submit as prima facie evidence that the Victory Fund violated Section  
12 441a(f) is insufficient to support a reason to believe finding. Moreover, the Commission found  
13 no additional facts to support the claim that the Victory Fund accepted excessive contributions.

14 Finally, there is no support for Complainants' allegations that the Victory Fund violated  
15 the reporting requirements of 2 U.S.C. § 434(b) by misreporting disbursements to OFA, and  
16 failing to provide identifying information for contributors who gave less than \$200. The Victory  
17 Fund responses and disclosure reports indicate that the transfers from the Victory Fund to OFA  
18 were made for ordinary disbursements of net proceeds pursuant to the joint fundraising  
19 agreement between OFA and DNC, and were reported correctly. 11 C.F.R. § 102.17; *see* OVF  
20 Responses in MURs 6139 and 6142 at 3. Further, the Act does not require committees to  
21 disclose the identification information of donors who contribute less than \$200 in the aggregate  
22 during the election cycle. *See* 11 C.F.R. § 102.9.

1 Accordingly, the Commission found no reason to believe that the Obama Victory Fund  
2 and Andrew Tobias, in his official capacity as Treasurer, received excessive contributions in  
3 violation of 2 U.S.C. §§ 441a(f) and 434(b).

4 **C. Possible Foreign National Contributions**

5 The FECA provides that it is unlawful for a foreign national, directly or indirectly, to  
6 make a contribution or donation of money or other thing of value in connection with a Federal,  
7 State, or local election, or to a committee of a political party and for a federal political committee  
8 to receive or accept such a contribution. 2 U.S.C. § 441e(a)(1) and (a)(2); 11 C.F.R. § 110.20(b).

9 A "foreign national" is an individual, partnership, association, corporation or other entity  
10 organized under the laws of or having its principal place of business in a foreign country.  
11 2 U.S.C. § 441e(b). A "foreign national" does *not* include a person who is a citizen, national or  
12 lawful permanent resident of the United States. *Id.*

13 Although the statute is silent as to any knowledge requirement, the Commission's  
14 implementing regulations clarify that a committee can only violate Section 441e with the  
15 *knowing* solicitation, acceptance, or receipt of a contribution from a foreign national. 11 C.F.R.  
16 § 110.20(g). The regulation contains three standards that satisfy the "knowing" requirement:  
17 (1) actual knowledge; (2) reason to know; and (3) willful blindness. 11 C.F.R. § 110.20(a)(4)(i)-  
18 (iii). The reason-to-know standard is satisfied when a known fact establishes "[s]ubstantial  
19 probability" or "considerable likelihood" that the donor is a foreign national. See Explanation  
20 and Justification for Prohibition on Contributions, Donations, Expenditures, Independent  
21 Expenditures and Disbursements by Foreign Nationals, 67 Fed. Reg. 69940, 69941 (quoting

1 BLACK'S LAW DICTIONARY, 5th Ed. (1979)). The willful blindness standard is satisfied when "a  
2 known fact should have prompted a reasonable inquiry, but did not." *See id.* at 69940.<sup>2</sup>

3 Several of the complaints allege that the Victory Fund violated 2 U.S.C. § 441e by  
4 accepting contributions from foreign nationals. As support for these allegations, different  
5 Complainants focus on the fact that contributors with foreign addresses gave to the Victory  
6 Fund, some ~~amounts~~ from individuals with foreign addresses were not ~~in~~ whole dollar  
7 amounts (which Complainants suggest means that the funds had been converted to U.S. dollars  
8 from a foreign currency), and various media outlets reported anecdotes about a half dozen  
9 foreign nationals may have contributed to OFA.

10 Complainants argue that there are widespread problems with the Victory Fund's  
11 compliance system, which warrant investigation into all of the Victory Fund's contributions  
12 received from individuals with foreign addresses. Daniels Complaint at 1; Moore Complaint at  
13 1. The Victory Fund maintains that its vetting procedures required online contributors to  
14 confirm citizenship or permanent resident status by checking a box. OVF Response in MURs  
15 6139 & 6142 at 2. Further, contributors with foreign addresses had to enter a valid U.S. passport  
16 number. *Id.* Finally, the Victory Fund asserts that it maintained a system that at regular intervals  
17 surveyed all contributions received from foreign addresses, personally contacted contributors

<sup>2</sup> Before the regulation was revised in 2002, Complainants expressed concerns about the level of scrutiny required under Section 441e. For example, a Statement of Reasons ("SOR") issued in a Section 441e case decided shortly before revision of the regulation examined the statutory language and legislative history to conclude that despite the absence of precise language of a "knowledge requirement" in the statute, "it would be fundamentally unjust to assess liability on the part of a fundraiser or recipient committee that solicits or receives a contribution if the contribution in fact appears to be from a legal source, especially if initial screening efforts resulted in specific assurances of the contribution's legality." MURs 4530, 4531, 4537, 4542, 4543 (Statement of Reasons by Commissioner Thomas *In re Democratic National Committee*, et al.) at 3. That, coupled with the Explanation and Justification issued in November 2002, a knowledge requirement may be inferred based on similar provisions in the Act that specifically included such language despite the absence of any knowledge requirement in the statute. *Id.* at 2 (citing 2 U.S.C. §§ 441f, 441b(4)). *See also* 11 C.F.R. § 103.3(h)(1), which provides that contributions which did not appear to be from a prohibited source must be returned within a specified period from the date on which the committee becomes aware of information indicating that the contribution is unlawful.

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1 who were not known to be U.S. citizens or lawful permanent residents, and required the  
2 submission of valid U.S. passport information. *Id.*

3 Based on the information in the complaints, as well as a review of publicly available  
4 information, there is no indication that the Victory Fund received even a single contribution from  
5 an individual who has been demonstrated to be a foreign national. There are no examples  
6 provided in the complaints or in the publicly available media or disclosure reports. Thus, there  
7 appears to be no support for the claim that there are systematic breakdowns in OVF's monitoring  
8 for contributions from foreign nationals. Accordingly, the Commission found no reason to  
9 believe that the Obama Victory Fund and Andrew Tobias, in his official capacity as Treasurer,  
10 violated 2 U.S.C. § 441e by accepting contributions from foreign nationals.

11 **D. Possible Contributions from Unknown Individuals**

12 The Act provides that no person shall make a contribution in the name of another person,  
13 and no person shall knowingly accept a contribution made by one person in the name of another.  
14 See 2 U.S.C. § 441f. A committee has thirty days from the date that a prohibited contribution is  
15 made or discovered to have been made to refund the impermissible contribution. 11 C.F.R.  
16 § 103.3(b)(2).

17 The complaints allege that individuals made contributions to the Victory Fund using  
18 fraudulent or fictitious names, and the Victory Fund's online fundraising mechanism provided no  
19 internal controls to circumvent the receipt of such prohibited contributions. Daniels Complaint  
20 at 1; Moore Complaint at 1. As discussed above, the Commission has provided guidance to  
21 committees that they may use Internet fundraising so long as committees use reasonable  
22 safeguards to enable them to verify the identity of contributors and screen for impermissible  
23 contributions with the same level of confidence that applies to other methods of fundraising, and

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1 act consistently with Commission regulations. *See* AO 1999-09 (Bill Bradley for President,  
2 Inc.). Complainants contend that the Victory Fund had no control mechanisms in place to catch  
3 third party fraud. Daniels Complaint at 1; Moore Complaint at 1. Consequently, the complaints  
4 argue, an investigation of all contributions is warranted. *Id.*

5 Respondents assert that the complaints presented no credible information that the Victory  
6 Fund had accepted contributions from unknown persons and was based wholly on speculation.  
7 OVF Response in MURs 6139 & 6142 at 2. The Victory Fund asserts that its internal system  
8 runs regular searches of its donor database in order to identify contributions that might violate  
9 the Act. *Id.*

10 There are no indications that the Victory Fund received contributions from the  
11 individuals specified in any of the complaints. The Commission's review determined that a  
12 contribution was made by a person named "Anonymous, Anonymous" totaling \$2,228. The  
13 Victory Fund's compliance system identified the suspect contribution and flagged it for  
14 verification, but did not refund it within the 30 days permitted by the Act.

15 Despite this apparent violation of Section 441f, the Commission determined that  
16 dismissal of these allegations is appropriate because (1) the prohibited contributions cited in the  
17 complaint are minimal when compared to the total amount of contributions received by OVF  
18 (\$2,228 accounts for .001% of \$93 million received), and (2) allegations of breakdowns in the  
19 compliance system set forth in the complaints are not borne out by the Commission's review of  
20 the contributions received by the Victory Fund. Thus, the Commission determined it would not  
21 be an efficient use of the Commission's resources to open an investigation into this issue. *See*  
22 *Heckler v. Chaney*, 470 U.S. 821 (1985); MUR 5950 (Hillary Clinton for President) (Factual and

- 1 Legal Analysis dismissing Section 441e violation to preserve resources where prohibited
- 2 contributions were refunded before the complaint was filed).
- 3 Accordingly, the Commission dismissed allegations that the Obama Victory Fund and
- 4 Andrew Tobias, in his official capacity as Treasurer, violated 2 U.S.C. § 441f by accepting
- 5 contributions from unknown persons in the name of another.



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**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matters of ) MURs 6078, 6090, 6108, 6139, 6142, 6214,  
 ) and AF# 2512  
Obama for America and )  
Martin Nesbitt in his )  
official capacity as Treasurer )  
 )

**CONCILIATION AGREEMENT**

This Conciliation Agreement reflects the final resolution of six separate complaints filed with the Federal Election Commission (the "FEC" or the "Commission") concerning contributions received during the 2008 presidential campaign by Obama for America and Martin Nesbitt in his official capacity as Treasurer ("Respondents" or "OFA") and issues identified in the Final Audit Report of the Commission on Obama for America (Jan. 16, 2007-Dec. 31, 2008).

The Commission found reason to believe that Respondents violated 2 U.S.C. § 441a(f) of the Federal Election Campaign Act of 1971, as amended ("the Act"), by accepting contributions in excess of the limits applicable to the 2008 presidential election that were not resolved through refund, redesignation, or reattribution within the 60 day period permitted under the Act.

The Commission also found reason to believe that Respondents violated 2 U.S.C. § 434(b) by misreporting the dates of contributions received through its joint fundraising representative, the Obama Victory Fund ("OVF"). Although OFA correctly reported the date OVF transferred those funds to OFA as required, it incorrectly identified the date of receipt of the underlying contributions as the date of the transfer from OVF to OFA, rather than the date that the contributions were originally received by OVF.

The Commission has further found reason to believe that Respondents failed to file certain 48-Hour Notices of contributions of \$1,000 or more received after the 20th day but more

1 than 48 hours before the 2008 general election, in violation of 2 U.S.C. § 434(a)(6)(A), and  
2 referred the violation to the Reports Analysis Division.

3 In response to a request from Respondents, on July 10, 2012, the Commission approved  
4 merging conciliation of Administrative Fine Matter #2512 ("AF# 2512") with MURs 6078,  
5 6090, 6108, 6142, and 6214 and authorized the Reports Analysis Division to transfer AF# 2512  
6 to the Office of General Counsel.

7 NOW, THEREFORE, the Commission and Respondents, having participated in informal  
8 methods of conciliation prior to a finding of probable cause to believe, do hereby agree as  
9 follows:

10 I. The Commission has jurisdiction over the Respondents and the subject matter of  
11 this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C.  
12 § 437g(a)(4)(A)(i).

13 II. Respondents have had a reasonable opportunity to demonstrate that no action  
14 should be taken in this matter.

15 III. Respondents enter voluntarily into this agreement with the Commission.

16 IV. The pertinent facts and law in this matter are as follows:

17 1. OFA is the principal campaign committee for President Barack Obama.  
18 Martin Nesbitt is the treasurer of OFA. From 2007 to 2008, OFA reported raising approximately  
19 \$745 million in contributions from more than 4 million separate contributors.

20 2. OVF is a joint fundraising committee established pursuant to 11 C.F.R.  
21 § 102.17, whose participants were OFA and the Democratic National Committee ("DNC").  
22 Andrew Tobias is the current treasurer of OVF. During the 2008 election cycle, OVF reported

1 that it raised over \$198 million in contributions, of which \$85,158,116 were transferred to OFA  
2 on various dates in 2008.

3 Untimely Resolution of Excessive Contributions

4 3. During the 2008 election cycle, the Act prohibited any person from  
5 making contributions to a candidate for federal office or the candidate's authorized political  
6 committee that in the aggregate exceeded \$2,300 each for the primary and general elections.  
7 2 U.S.C. § 441a(a)(1)(A). As a corollary, it was unlawful for a candidate for federal office or the  
8 candidate's authorized political committee to accept contributions that in the aggregate exceeded  
9 \$2,300 each for the 2008 primary and general elections. 2 U.S.C. § 441a(f).

10 4. OFA was limited to accepting contributions from individual donors that in  
11 the aggregate did not exceed \$2,300 each for the primary and general elections. 2 U.S.C.  
12 § 441a(a)(1)(A). Where a committee receives an excessive contribution, the Commission's  
13 regulations give the committee 60 days from the date of receipt to identify and resolve the  
14 excessive contribution via refund, redesignation, or reattribution of the excessive amount.  
15 11 C.F.R. §§ 103.3(b)(3), 110.1(b).

16 5. From 2007 to 2008, OFA accepted a total of \$1,363,529 in contributions  
17 that exceeded the limits set forth in 2 U.S.C. § 441a(a)(1)(A) and that were not resolved through  
18 refund, redesignation, or reattribution within 60 days of receipt as permitted under the Act.  
19 Respondents contend these excessive contributions represent approximately .18% of all  
20 contributions received by OFA during the 2008 election cycle.

21 6. OFA has since resolved the \$1,363,529 in excessive contributions through  
22 the untimely refund, redesignation, or reattribution of those contributions. Of that amount, OFA  
23 resolved \$489,616 before any Commission investigation took place and another \$873,913 after

1 receiving the Commission's analysis of information contained in the disclosure reports and  
2 internal records of OFA.

3 Misreporting Dates of Contributions

4 7. The Act requires all political committees to publicly report all of their  
5 receipts and disbursements. 2 U.S.C. § 434. Each report must disclose for the reporting period  
6 and calendar year the total amount of all receipts and the total amount of all disbursements.  
7 2 U.S.C. § 434(b)(2), (4); 11 C.F.R. § 104.3(a), (b).

8 8. The Act requires that an authorized committee of a candidate report the  
9 amount of all receipts from transfers by affiliated committees, as well as the identity of the  
10 affiliated committee and the date of each transfer. 2 U.S.C. § 434(b)(2)(F), (3)(D); 11 C.F.R.  
11 §§ 102.17(c)(3)(iii), (8)(i)(B), 104.3(a)(4), 104.8.

12 9. Commission regulations permit political committees to engage in joint  
13 fundraising with other political committees or with unregistered committees or organizations.  
14 11 C.F.R. § 102.17. After a joint fundraising representative distributes the net proceeds, a  
15 participating political committee is required to report its share of funds received as a transfer-in  
16 from the fundraising representative. *Id.*

17 10. For contribution reporting and limitation purposes, the date a contribution  
18 is received by the joint fundraising representative — not the date received by the recipient  
19 political committee — is the date that the contribution is received by the participating political  
20 committee. 11 C.F.R. §§ 102.17(c)(3)(iii), (c)(8). The participating political committee is  
21 required to report the original date of receipt of the proceeds only after the funds have been  
22 transferred from the fundraising representative. *Id.*

11. For the \$85,158,116 in contributions received in transfers from OVF, Respondents reported the dates that the contributions were transferred to OFA, rather than the dates on which the underlying contributions were received by OVF, as required by 2 U.S.C. § 434(b)(2), (4) and 11 C.F.R. §§ 102.17(c), 104.3(a), (b).

48-Hour Notices

12. The Act requires that a candidate's principal campaign committee shall notify the Commission of all contributions of \$1,000 or more, received by any authorized committee of the candidate less than 20 days but more than 48 hours before any election in which the candidate is running. 11 C.F.R. §104.5(f).

13. Respondents did not file 48-Hour Notices for 1,266 contributions totaling approximately \$1,895,956. See Final Audit Report of Commission on Obama for America (Jan. 16, 2007-Dec. 31, 2008); AF# 2512. Respondents have waived their right to appeal the \$191,135 administrative fine assessed in AF# 2512, and are paying the full amount of the fine as part of the penalty set forth in this agreement.

14. The Commission found that the majority of the contributions for which 48-Hour Notices were required but not filed, including 711 contributions totaling approximately \$1,046,045, arose from transfers from OVF.

V. In the interest of resolving this matter promptly, Respondents admit the following:

1. Respondents violated 2 U.S.C. § 441a(f) and 11 C.F.R. §§ 103.3(b)(3), 110.1(b) by accepting \$1,363,529 in excessive contributions, which they failed to refund, redesignate, or reattribute within 60 days of receipt, as required by the Act.

2. Respondents violated 2 U.S.C. § 434(b) and 11 C.F.R. §§ 102.17(c), 104.3(a)(3) by misreporting the original date of receipt for contributions received through OVF.

3. Respondents violated 2 U.S.C. § 434(a)(6)(A) by failing to file 48-Hour Notices for contributions totaling \$1,895,956.

VI. 1. Respondents will pay a penalty of three hundred and seventy-five thousand dollars (\$375,000) to resolve both the complaint-generated matters and the administrative fine determination pursuant to 2 U.S.C. §§ 437g(a)(4) and (5)(A). The administrative fine accounts for \$191,135 of the total penalty.

2. Respondents will cease and desist from violating 2 U.S.C. §§ 434(a), (b) and 441a(f).

3. Respondents will file with the Commission, in coordination with the Reports Analysis Division, an amendment to OFA's 2008 30 Day Post-General report that will identify the joint fundraising representative's original date of receipt for those contributions that are the subject of the reporting errors addressed in this conciliation agreement.

4. Respondents will confirm that they have refunded as necessary any contributions identified in the Section 437g audit as excessive and have amended their relevant disclosure reports. Respondents will disgorge to the U.S. Treasury any refunded contributions that the contributor fails to negotiate within thirty (30) days of the effective date of this agreement and will provide evidence of any disgorgement (copies of front and back of negotiated check) to the Commission.

VII. The Commission on its own motion or upon request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein may review the Respondents' compliance with this agreement. If the Commission believes that this agreement or any of its requirements has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

VIII. This agreement shall become effective as of the date that all parties hereto have executed the same and the Commission has approved the entire agreement.

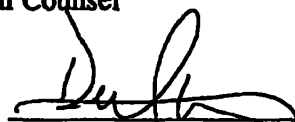
IX. Respondents shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:


Anthony Herman  
General Counsel

BY:

  
Daniel A. Petalas  
Associate General Counsel  
for Enforcement

12-7-12  
Date

FOR THE RESPONDENTS:

  
Obama for America and  
Martin Nesbitt in his official  
capacity as Treasurer

11-14-12  
Date